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RECENT CASES.

CARRIERS.

Railroad—Fellow Servant—Personal Injuries—Negligence.—Oregon Short Line Railway Co. v. Frost's Adm'x, 44 U. S. App. 606. In an action for damages for the death of a trainman killed in a collision, it appeared that the accident was due to the negligence of a telegraph operator at a local station; and the question arose whether or not the operator was the fellow-servant of the company's employees who were in charge of the train. It was held, following *Slater v. Jewett*, 85 N. Y. 61, 72, that the operator was a fellow-servant, inasmuch as his duty was so closely connected with the work of the trainmen in the movement of the train. *No. Pacific Ry. v. Charles*, 7 U. S. App. 359, 371, which the dissenting judge adhered to, was distinguished by the fact that there the allegation of the complaint and the admission of the answer placed the operator practically in the position of a train-despatcher, ordering the movement of trains, and not in that of a local operator through whom the orders of a superior were to be delivered, and that the question of the present case was not involved.

Street Railroads—Tender of Fare—Reasonableness.—Barker v. Central Park, N. & E. R. R. Co., 45 N. E. Rep. 550 (N. Y.). The tender of a five-dollar bill in payment of a five-cent fare is unreasonable as a matter of law; it is not a question for the jury in the absence of any custom of making such a tender or of any rule of car company requiring conductors to make change in such an amount. But see *Barrett v. Railway Co.*, 81 Cal. 296, where a tender of a five-dollar gold piece was held reasonable, though possibly for local reasons, it being the smallest gold coin in general circulation.

EVIDENCE.

Dying Declarations—Attendant Circumstances—Evidence to Impeach—Proof of Conversation.—Carver v. United States, 17 Sup. Ct. Rep. 228. "Evidence that the deceased, who was a Catholic, had received the last rites of the church is admissible as tending to show that she must have known that she was 'in articulo mortis,' and to lend an additional sanctity to her statements. And where the whole or

a part of a conversation has been put in evidence by one party, the other party is entitled to explain, vary or contradict it." Also defendant should be allowed to show that the deceased made statements in apparent contradiction to her dying declaration.

Statute of Frauds—Evidence—Usage and Custom.—*Salomon v. McRae*, 47 Pac. Rep. 409 (Col.). The fact that a bill of goods is marked "O. K.," followed by the agent's name, is not a sufficient memorandum, within the Statute of Frauds, to bind the agent on a contract of guaranty for all goods sold on credit. Evidence of a usage or custom is inadmissible to show that the letters used implied a guaranty of payment.

FEDERAL JURISDICTION.

Federal Jurisdiction—Creditors' Bill—State Judgment.—*First Nat. Bank of Chicago v. Steinway et al.*, 77 Fed. Rep. 661. A creditors' bill was filed by the plaintiff against the defendant, a citizen of another State, to reach equitable assets, the amount in question being sufficient to sustain the jurisdiction of the federal court. The bill was demurred to, on the ground that it was not maintainable, because based upon a judgment rendered by a State court, and because statutory remedies were available in the State courts. The court, in overruling these demurrers, held that "the equity jurisdiction of the circuit court of the United States cannot be taken away or diminished by State legislation."

Federal Courts—Jurisdictional Amount—Recoupment.—*Pickham v. Wheeler-Bliss Mfg. Co.*, 77 Fed. Rep. 663. When in an action in a Circuit Court to recover an alleged balance due of over \$2,000, the amount in question is reduced by counter-claims to less than that sum, the court does not lose jurisdiction, if the plaintiff had no knowledge of such set-off before bringing the suit.

Criminal Law—Federal Jurisdiction—Larceny in Post Office.—77 Fed. 170, D.C. (Ind.).—*U. S. v. Saunders*. Felony in building used in part as post-office, does not come under federal jurisdiction unless felony is attempted to be committed within the part so used. Failure to so distinguish held ground for demurrer in *U. S. v. Campbell*, 16 Fed. 233. Indictment stating that the money stolen belonged to U. S. held sufficient. *U. S. v. Williams*, 57 Fed. 201.